BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 12.10.2022

Delivered On : 30.01.2023

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)Nos.1078, 1079 and 1080 of 2012

C.M.A.(MD)No.1078 of 2012

Royal Sundaram Alliance Insurance Co., Ltd.,
46, Whites Road,
Chennai 600 014.
Through its Manager ... Appellant / Respondent

Vs.

S.Sivaram ... Respondent/ Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 29.10.2011, made in M.C.O.P.No.505 of 2009, on the file of the Motor Accident Claims Tribunal - III Principal District Judge, Tuticorin.

For Appellant	: Mr.S.Srinivasa Raghavan
For Respondent	: No appearance

C.M.A.(MD)No.1079 of 2012

Royal Sundaram Alliance Insurance Co., Ltd.,
46, Whites Road,
Chennai 600 014.
Through its Manager ... Appellant / Respondent

Vs.

S.Sivaram ... Respondent/ Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 29.10.2011, made in M.C.O.P.No.507 of 2009, on the file of the Motor Accident Claims Tribunal - III Principal District Judge, Tuticorin.

For Appellant : Mr.S.Srinivasa Raghavan
For Respondent : No appearance

C.M.A.(MD)No.1080 of 2012

Royal Sundaram Alliance Insurance Co., Ltd.,
46, Whites Road,
Chennai 600 014.
Through its Manager ... Appellant / Respondent

Vs.

S.Sivaram ... Respondent/ Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 29.10.2011, made in M.C.O.P.No.510 of 2009, on the file of the Motor Accident Claims Tribunal - III Principal District Judge, Tuticorin.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondent : No appearance

COMMON JUDGMENT

The Civil Miscellaneous Appeals have been filed against the common award, dated 29.10.2011, made in M.C.O.P.Nos.505, 507 and 510 of 2009, on the file of the Motor Accident Claims Tribunal - III Principal District Judge, Tuticorin.. The appellant herein is the respondent, the first respondent herein is the claimant.

2. A brief substance of the claim petition in M.C.O.P.No.505 of 2009, is as follows:

On 03.12.2008, the petitioner and his family members were returning to Thoothukudi from Thisayanvilai after attending a marriage, in a Maruthi 800 Car, bearing Registration No.TN-69-M-0713, when the father of the petitioner, by name, Sudalaiyandi, was driving the car in a drowsy and sleepy mood, the vehicle went off from the road to the right side that is on the eastern side of the road and fell into the adjoining Authoor tank and the car drowned into the water. When the petitioner escaped from the car by jumping out, he sustained injuries and he claimed a sum of Rs.10,00,000/- as compensation.

3. A brief substance of the claim petition, in M.C.O.P.No.506 of 2009, is as follows:

In the said accident, the brother of the petitioner,namely, Sudar Sabarish, died. The deceased - Sudar Sabarish was 12 years old. The petitioner lost his brother and he claimed a sum of Rs.30,000/- as compensation.

4. A brief substance of the claim petition, in M.C.O.P.No.510 of 2009, is as follows:

In the said accident, the mother of the petitioner, namely, Sankari, died. The deceased - Sankari was 46 years old and she was earning Rs.21,000/- per month by doing tailoring and by money lending. The petitioner lost his mother and he claimed a sum of Rs.30,00,000/- as compensation.

5. Brief substance of the counter filed by the respondent in all the petitions is as follows:

The manner of accident is wrongly narrated in the petition. The petitioner has not sustained any injury in the accident. He has not taken any treatment. The claimant sustained only simple injuries and award for pain and sufferings is not valid. The petitioner has to prove that the late.Sudalaiyandi was having valid and effective driving licence. The age, income of the two deceased were not admitted. The compensation claimed under various heads are all excessive. The petitions to be dismissed.

6. Brief substance of the additional counter filed by the respondent in all the petitions is as follows:

Even in the F.I.R, it was stated that the petitioner's father was the owner cum driver and he was driving the car in a drowsy sleepy mood, which resulted in the accident. Since the owner of the car was not impleaded as a party, the insurance company is not liable to pay compensation.

7. Another petition in M.C.O.P.No.506 of 2009 was filed along with this claim petitions. All the four petitions arose out of the same accident and hence, the Tribunal has taken up all the four matters for joint trial and pronounced a common judgment.

8. In the joint trial before the Tribunal, 2 witnesses were examined and 15 documents were marked, on the side of the claimant. 1 witness was examined and 1 document was marked, on the side of the respondent. After considering both sides, the Tribunal dismissed the claim petition in M.C.O.P.No.506 of 2009. The Tribunal awarded Rs.25,000/- as compensation in M.C.O.P.No.505 of 2009. The Tribunal awarded Rs.2,12,500/- as compensation in M.C.O.P.No.507 of 2009. The Tribunal awarded Rs.4,71,500/- as compensation in M.C.O.P.No.510 of 2009.

9. Against the order, the respondent / respondent filed these appeals on the following grounds:-

The claimant is not a third party, he has actually become the owner of the vehicle. His father was the registered owner of the vehicle at the time of accident. The claimant cannot be the same person to claim compensation as well as a person, who ought to have paid the compensation. The policy of insurance is not meant for compensating the owner of the vehicle. The Tribunal is wrong in the fixing liability to pay compensation for the occupant of the vehicle. The Tribunal failed to consider that though the policy is a comprehensive policy, since the claimant become the owner of the vehicle on the death of the registered owner, which disentitle him to claim compensation against himself. When the owner of the vehicle was dead, his legal representatives are answerable to third parties and there is no necessity for the insurance company, to indemnify the legal representative of the owner. The deceased-registered owner was the tort feaser and the claim in M.C.O.P.No.506 of 2009 was rightly dismissed by the Tribunal. But, the Tribunal failed to consider that the petitioner as the sole surviving legal heir of the deceased has become the owner of the vehicle and as such, he is not a third partly.

10. On the side of the appellant, ti is stated that the owner of the vehicle was not impleaded as a party to the case. Unless the owner is responsible, there is no necessity for the insurance company to indemnify the owner and as such, the insurance company is not liable to pay compensation to the legal representative of the tort feaser. The petitions were not filed under Section 163-A of M.V.Act, where negligence need not be proved. The petitioner filed the claim petitions under Section 166 of M.V.Act and the negligence ought to have been proved. The Insurance Company has to indemnify the owner, when an owner was not at all a party, the insurance company is not liable. After the death of the registered owner, the claimant is the owner and he is not a third party to the contract.

11. Copy of the F.I.R was marked as Ex.P1. Even in the claim petition, it was stated that the driver of the vehicle was in a drowsy and in a sleep mood, which resulted in the vehicle entering a tank and drown. F.I.R was referred and the referred

charge was marked as Ex.P2. M.V.I report was marked as Ex.P6. P.W.2 was examined as the eye witness. On the basis of P.W.2 and on the basis of Ex.P1, P2 and P6, it is decided that the deceased-Sudalaiyandi was responsible for the accident.

12. The vehicle was insured with the appellant. The insurance policy was marked as Ex.P4 and Ex.R1. It is seen that the insurance policy was valid at the time of accident. Driving licence of the deceased was marked as Ex.P3.

13. It is true that the owner of the vehicle was not impleaded as a party, in all the claim petitions. The owner of the vehicle died in the same accident and since the owner is dead, he was not impleaded in the claim petitions.

14. On the side of the appellant, it is stated that after the death of the father, the claimant become the owner of the vehicle and as such he cannot claim compensation from his own insurance company and that he is not a third party to the contract. The vehicle was in the name of the father, who died in the very same accident. The vehicle was not transferred to the name of the claimant. In the above circumstances, not impleading the deceased person as the owner of the vehicle is not affecting the case of the claimant. The vehicle was not registered in the name of the claimant. The claim is to be decided as per the position of the parties, at the time of

accident. On the date of accident, the claimant was not the owner of the vehicle. The appellant cannot take advantage of the subsequent events, to decide the issue. As the claimant was not the owner of the vehicle at the time of accident, the averment set out by the appellant is not sustainable.

15.From Ex.R1 and from Ex.P4, it is clear that additional premium was paid for four persons, apart from the owner of the vehicle. Since the premium was paid for the occupants of the vehicle, as the occupants of the vehicle, the claimant is entitled to claim compensation, for his injuries. Hence, it is decided that the claimant is entitled to claim compensation from the appellant.

16. There is no dispute raised by the appellant regarding the quantum. Nothing was elicited in the grounds of appeal regarding the quantum. Hence, it is decided that the quantum fixed by the Tribunal is reasonable.

17. In view of the above discussion, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal. Hence, these appeals are dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal in all the M.C.O.P. petitions is confirmed.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation (if not already deposited) in all the M.C.O.P. Cases, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant / Insurance Company, the respondent herein / claimant is permitted to withdraw the entire award amount in all the M.C.O.P. petitions along with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The claimant is not entitled for interest for the default period, if there is any.

30.01.2023

Index : Yes/No
Internet : Yes/No
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To

1.The III Additional Sub Judge,
Motor Accident Claims Tribunal,
Trichy.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)Nos.1078, 1079 and 1080 of 2012

30.01.2023